

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/04-02/06
Date: 6 December 2016

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Public redacted version of "Prosecution request to file a reply to the 'Response on Behalf of Mr Ntaganda to 'Prosecution application under Rule 68(3) to admit Witness P-0031's prior recorded testimony and associated material'",
23 November 2016, ICC-01/04-02/06-1647-Conf**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants
(Participation/Reparation)**

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States' Representatives

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**Victims Participation and Reparations
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Other

Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“Regulations”), the Prosecution requests leave to file a reply to the “Response on Behalf of Mr Ntaganda to ‘Prosecution application under Rule 68(3) to admit Witness P-0031’s prior recorded testimony and associated material’” (“Response”).¹
2. The Prosecution seeks to address two issues in its reply, namely: (i) whether the length of prior recorded testimony is a relevant factor against admission under rule 68(3), in particular considering Trial Chamber VI’s (“Chamber”) prior decisions in relation to this rule; and (ii) the admissibility pursuant to rule 68(3) of two documents ([REDACTED]) [REDACTED].

Confidentiality

3. This filing is classified as “Confidential” pursuant to regulation 23*bis*(1) and (2) of the Regulations because it contains confidential information and to be consistent with the classification of the Response. The Prosecution will file a public redacted version of this filing in due course.

Procedural Background

4. On 7 November 2016, the Prosecution filed a motion in which it requested the Chamber to admit Witness P-0031’s prior recorded testimony and associated material (“Motion”).²
5. On 22 November 2016, the Defence filed its Response. While the Defence does not oppose certain aspects of the Motion, it opposes others and requests additional time for Witness P-0031’s cross-examination.

¹ ICC-01/04-02/06-1643-Conf.

² ICC-01/04-02/06-1615-Conf.

Prosecution's Submissions

6. Pursuant to regulation 24(5) of the Regulations, the Prosecution seeks leave to reply to Defence submissions regarding the factors to be considered in rule 68(3) applications and the admissibility of two items of evidence.
7. The Prosecution's reply, if allowed, will address the following two issues:
 - (i) *Issue one:* whether the length of prior recorded testimony is a relevant factor against admission under rule 68(3), in particular considering the Chamber's prior decisions, given that the Prosecution's request in this case is to admit, *inter alia*, [REDACTED];³ and
 - (ii) *Issue two:* the admissibility of two documents ([REDACTED]) [REDACTED]. In particular, the Prosecution seeks to address the issue as to the degree of connection required between a witness and a document for the purposes of admissibility.⁴
8. A reply by the Prosecution will assist the Chamber in its determination. Should the Chamber grant leave, the Prosecution will set out its substantive submissions in a brief reply without repeating any arguments contained in its Motion.
9. First, the Prosecution seeks to address the Chamber's recent decision granting the Prosecution's rule 68(3) application in full for Witness P-0012, in reply to several arguments raised by the Defence. The decision was issued on 21 November 2016, *after* the Prosecution had filed its application and thus the Prosecution was unable make submissions on this decision therein.

³ Defence Request, paras.1, 5 and 7.

⁴ Defence Request, paras.12-16.

10. Second, the Prosecution could not anticipate that the Defence would re-litigate issues already decided by the Chamber in similar circumstances.
11. Third, allowing the Prosecution to provide its views on the above-named issues is necessary, in particular since the Chamber's determination may have an impact on whether the Prosecution will seek to rely on rule 68(3) in relation to witnesses other than Witness P-0031.

Request

12. Based on the foregoing, and pursuant to regulation 24(5) of the Regulations, the Prosecution requests that the Chamber grant leave to file a reply.



Fatou Bensouda
Prosecutor

Dated this 6th Day of December 2016
At The Hague, the Netherlands